

THIS OPINION WAS NOT WRITTEN FOR PUBLICATION

The opinion in support of the decision being entered today (1) was not written for publication in a law journal and (2) is not binding precedent of the Board.

Paper No. 11

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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Ex parte ANTHONY SMITH

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Appeal No. 97-3983  
Application 08/506,851<sup>1</sup>

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ON BRIEF

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MAILED

AUG 26 1998

PAT. & T.M. OFFICE  
BOARD OF PATENT APPEALS  
AND INTERFERENCES

Before STAAB, McQUADE and NASE, Administrative Patent Judges.

McQUADE, Administrative Patent Judge.

DECISION ON APPEAL

Anthony Smith originally appealed from the final rejection of claims 1 through 20, all of the claims pending in the application. The appellant has since waived the appeal as to claims 1 through 8 (see page 1 in the brief, Paper No. 9). Accordingly, the appeal as to these claims is hereby dismissed, leaving for review the standing rejections of

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<sup>1</sup> Application for patent filed July 25, 1995.

claims 9 through 20.

The invention relates to a "cartlike sanitation apparatus adapted to receive liquid waste, as from hospital patients, for transport to a nearby disposal site for draining discharge" (specification, page 1). Claims 9 and 13, the two independent claims remaining on appeal, are illustrative and read as follows:

9. In mobile sanitation apparatus having housing means, the improvement comprising temporarily deformable elastomeric receptor means for a patient's waste liquid, tubular means adapted to conduct the waste liquid from the receptor means into a temporary waste liquid storage compartment in the housing means, and rinse means for rinsing clean the waste liquid path from the receptor means into the storage compartment.

13. In mobile sanitation means, the improvement comprising elastomeric receptor means for waste liquids, having a base with a discharge outlet and having a hollow wall upstanding surrounding a major part of the base and having an opening into the wall hollow and openings connected therewith through and along the wall and facing inward therefrom for rinse water supplied to the hollow to flow down the wall and over the base to the discharge opening.

The references relied upon by the examiner as evidence of anticipation and obviousness are:

|                          |           |              |
|--------------------------|-----------|--------------|
| Coffman et al. (Coffman) | 3,192,537 | Jul. 6, 1965 |
| Smith                    | 5,117,511 | Jun. 2, 1992 |

Claims 13 and 17 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Smith, and claims 9 through 12 and 14 through 20 stand rejected under 35 U.S.C. § 103 as being unpatentable over Smith in view of Coffman.

Reference is made to the appellant's brief (Paper No. 9) and to the examiner's answer (Paper No. 10) for the respective positions of the appellant and the examiner with regard to the merits of these rejections.

Smith, the examiner's primary reference, discloses an apparatus for the disposal of undesirable and unsanitary substances, such as spit or saliva, from the passenger compartment of a motor vehicle. The apparatus includes a funnel 20 connected to water-supply tubing 23 and drain tubing 27. According to Smith,

[t]he tubing may be obtained in almost any desired size in rubber or any of many synthetic polymers, such as nylon, polyvinyl chloride, polyethylene, and polypropylene, for example. The funnel may be of similar composition or may be made of glass or of a thermosetting phenol-formaldehyde or urea-formaldehyde resin, for example [column 5, lines 38 through 44].

The water-supply tubing originates at a rinsewater bottle 32, continues to and past a water pump  $P_w$  and terminates at the funnel. The drain tubing extends from the funnel through the bottom of the vehicle (see, for example, Figure 2) or to an interim collection site within the vehicle if external disposal of the waste substances is prohibited or undesirable (see column 6, lines 28 through 35). The funnel is movable between a rest position partially surrounded by housing 14 beneath the dash 13 and an extended, use position (see Figure 2). In its rest position, the funnel contacts an automatic switch  $S_A$  for the water pump. The apparatus also includes a manual pump switch  $S_M$ . As shown in Figure 4, the funnel has a hollow, double wall construction, the interior of which

communicates with the water-supply tubing 23. The inner wall of the funnel has a ring of openings therein for feeding the water into and down through the funnel to the drain tubing. As explained by Smith,

[t]he manual switch is actuated directly by hand, of course, and the automatic switch is actuated indirectly by manual withdrawal of the funnel from its rest position to an extended use position. Either way rinsewater is pumped to the funnel. The supplied rinsewater flows into the space between the funnel walls, exits through the ring of openings near the [top] edge of the inside wall, and flows down through the funnel and out from its neck into, through, and out the drain tube when the funnel is in use or is being rinsed preliminary to or following use.

When the driver or a passenger wishes, he or she withdraws the funnel from its rest position. Withdrawal of the funnel from contact with the automatic switch triggers the switch to actuate the pump, whereupon water flows from the openings near the rim down the exposed inside wall of the funnel. Such water rinses away, down and out the drain tube, surplus liquid (such as saliva), or even finely divided particulate matter (such as sand or tobacco grains) fed into the funnel gradually enough so as not to block or overflow it. When finished using the funnel, the user returns it to its rest position, thereby switching off the [w]ater flow, unless continued flow is required to clear the drain tube, in which event the manual switch can be switched on for a suitable period [column 3, lines 32 through 57].

With regard to the standing 35 U.S.C. § 102(b) rejection of claims 13 and 17, anticipation is established only when a single prior art reference discloses, expressly or under principles of inherency, each and every element of a claimed invention. RCA Corp. v. Applied Digital Data Sys., Inc., 730 F.2d 1440, 1444, 221 USPQ 385, 388

(Fed. Cir. 1984). It is not necessary that the reference teach what the subject application teaches, but only that the claim read on something disclosed in the reference, i.e., that all of the limitations in the claim be found in or fully met by the reference. Kalman v. Kimberly Clark Corp., 713 F.2d 760, 771, 218 USPQ 781, 789 (Fed. Cir. 1983), cert. denied, 465 U.S. 1026 (1984).

The appellant contends that the anticipation rejection of claims 13 and 17 is unsound because Smith does not meet the limitation in claim 13 requiring the receptor means to be "elastomeric" or the limitation in claim 17 requiring a "mobile sanitation cart" (see pages 5 and 7 in the brief). As indicated above, however, Smith teaches that the receptor means or funnel 20 disclosed therein may be made of rubber, a well known elastomeric material. The fact that Smith also discloses that the funnel may be made of other materials which are not elastomeric does not in any way diminish or negate the teaching of rubber as urged by the appellant. It is also not evident, nor has the appellant cogently explained, why the recitation in claim 17 of the "mobile sanitation cart" does not read on Smith's vehicle mounted apparatus. The Smith apparatus is mobile, is concerned with sanitation, and is a "cart" as broadly recited in the claim.<sup>2</sup>

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<sup>2</sup> Webster's New Collegiate Dictionary (G. & C. Merriam Co. 1977) defines "cart" as meaning "a small wheeled vehicle."

Thus, the appellant's position that the subject matter recited in claims 13 and 17 is not anticipated by Smith is not persuasive. Therefore, we shall sustain the standing 35 U.S.C. § 102(b) rejection of these claims.

As for the standing 35 U.S.C. § 103 rejection of claims 9 through 12 and 14 through 20, Coffman discloses a portable cart-like shampoo device for patients confined to a bed or chair. The device includes a cabinet or housing 12, a pair of water supply tanks 36, a main shampoo bowl 66, pumps for supplying water from the supply tanks to the main bowl via faucets 56 and 58 and/or a spray head 64, a drainage water storing tank 50, a drain pipe 72 connecting the main bowl to the drainage tank, and an ancillary bowl 126 particularly designed for bed-ridden patients. As shown in Figure 5, the ancillary bowl, which is connectible to the main bowl via a drain tube 140, is semi-circular in outline and has a neck-receiving recess 130 formed in its sidewall 132.

According to the examiner, it would have been obvious to one of ordinary skill in the art at the time the invention was made "to provide Smith with a waste collection tank such as taught by Coffman et al at 50" (answer, page 3). The examiner also considers that "to provide for a portion of the [Smith] receptor [funnel 20] to be absent as set forth at 130 of Coffman et al would have been obvious in order to accommodate the user" (answer, page 3).

The appellant's argument with respect to the obviousness rejection of independent claim 9 is based on a limitation which was proposed subsequent to final rejection and refused entry by the examiner (see page 6 in the brief). Since the limitation in question does not appear in the claim, the appellant's argument fails at the outset (see In re Self, 671 F.2d 1344, 1348, 213 USPQ 1, 5 (CCPA 1982)).

Therefore, we shall sustain the standing 35 U.S.C. § 103 rejection of claim 9 as being unpatentable over Smith in view of Coffman.

We also shall sustain the standing 35 U.S.C. § 103 rejection of dependent claims 10 and 11 as being unpatentable over Smith in view of Coffman since the appellant has not challenged such with any reasonable specificity, thereby allowing these claims to stand or fall with parent claim 9 (see In re Nielson, 816 F.2d 1567, 1572, 2 USPQ2d 1525, 1528 (Fed. Cir. 1987)).

We shall not sustain, however, the standing 35 U.S.C. § 103 rejection of dependent claim 12 as being unpatentable over Smith in view of Coffman.

Claim 12 further defines the temporary storage compartment recited in parent claim 9 as being "at a height enabling it to be positionable over and be discharged into a toilet bowl." In short, the combined teachings of Smith and Coffman would not have suggested providing the Smith apparatus with a temporary storage compartment positioned at such a height. The examiner's determination that "the term 'positionable

over' fails to define structure that distinguishes over the art here in that any device can be lifted to such a height" (answer, page 3) rests on an unreasonable interpretation of the claim language in question.

Finally, we shall sustain the standing 35 U.S.C. § 103 rejection of claims 14 through 20, all of which ultimately depend from claim 13, as being unpatentable over Smith in view of Coffman.

Claim 14 recites "a flexible discharge outlet tube for connection to receive waste liquid and to convey it to a mobile compartment for waste water." The Smith drain tubing 27 constitutes a flexible discharge outlet tube for connection to receive waste liquid. Smith's teaching that this drain tubing may communicate with an interim collection site within the automobile if external disposal of the waste substances is prohibited or undesirable would have provided the artisan with ample suggestion to connect the tubing to a waste compartment of the sort disclosed by Coffman, thereby meeting the terms of claim 14.

Claims 15 and 16 fall with parent claim 14 since the appellant has not challenged the rejection thereof with any reasonable specificity (see In re Nielson, *supra*).

As for claim 17, the appellant's contention that the "mobile sanitation cart" feature recited therein is not taught by the applied references is not persuasive for the reasons discussed above in conjunction with the anticipation rejection of this claim.

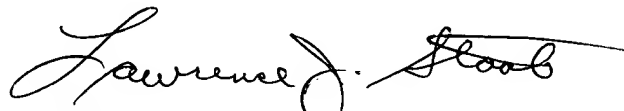
With regard to claims 18 through 20, the appellant does not specifically dispute the examiner's conclusion that it would have been obvious to one of ordinary skill in the art to provide for a portion of the Smith receptor or funnel 20 to be absent in the manner of Coffman's recess 130 to accommodate a user. Instead, the appellant contends that the provision of such a recess or depression in the Smith funnel would not meet the limitations in these claims (see page 7 in the brief). This position is not well taken. Suffice it to say that the provision of a recess or depression in Smith's receptor means or funnel 20 would result in the funnel wall being absent as recited in claim 18, the discharge outlet of the funnel being remote from the absent wall as recited in claim 19, and the wall of the funnel being substantially U-shaped in plan view as recited in claim 20.

In light of the foregoing, the decision of the examiner to reject claims 9 through 20 is affirmed with respect to claims 9 through 11 and 13 through 20 and reversed with respect to claim 12.

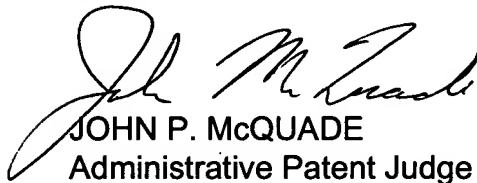
Appeal No. 97-3983  
Application 08/506,851

No time period for taking any subsequent action in connection with this appeal  
may be extended under 37 CFR § 1.136(a).

AFFIRMED-IN-PART



LAWRENCE J. STAAB  
Administrative Patent Judge



JOHN P. McQUADE  
Administrative Patent Judge



JEFFREY V. NASE  
Administrative Patent Judge

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